

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

PATRICIA A. LONG,
Plaintiff,

v.

ALAN BOTZHEIM, individually
and as Pend Oreille County
Deputy Sheriff, and RONALD
FROMAN, individually and as
Pend Oreille County Deputy
Sheriff,

Defendants.

NO. CV-04-344-EFS

**ORDER ENTERING RULINGS FROM
SEPTEMBER 21-22, 2009 TRIAL**

On September 21-22, 2009, the Court held a bench trial in the above-captioned matter. Christopher J. Kerley appeared on behalf of Defendants; Patricia A. Long appeared *pro se*. This Order serves to supplement and memorialize the Court's findings of fact and conclusions of law.

I. Findings of Fact

At trial, the Court heard testimony from Defendants Botzheim and Froman, Plaintiff Long, Detra Johnson, William Johnson, Leonard Browning, Dean Yongue, and Deputy Questin Youk. Defendants also submitted

1 exhibits. The Court makes the following findings of fact after
2 considering the exhibits and testimony:

3 1. This is a 42 U.S.C. §1983 case arising out of Plaintiff Patricia
4 Long's second-degree trespass arrest on October 12, 2002, by Defendants
5 Alan Botzheim and Ronald Froman of the Pend Oreille County Sheriff's
6 Department.

7 2. Plaintiff Patricia Long owned a parcel of real property in Pend
8 Oreille County.

9 3. Thomas Franklin owned a parcel of real property adjacent to Ms.
10 Long's property.

11 4. Ms. Long claimed the boundary separating her property from Mr.
12 Franklin's was an old fence line because she had acquired the land
13 leading up to that line through adverse possession.

14 5. Mr. Franklin claimed the true property line was actually south
15 of the old fence line, and that this true property line was established
16 by a survey completed in 1998 by professional surveyor Dean Yongue and
17 filed with Pend Oreille County.

18 6. On October 2, 2002, Mr. Franklin and Mr. Yongue visited the
19 property for a resurvey.

20 7. At the request of Mr. Franklin, Sgt. Alan Botzheim and two (2)
21 other Pend Oreille County Sheriff's Deputies, Questin Youk and Ronald
22 Froman, attended to perform a civil standby to keep the peace during the
23 survey.

24 8. At 9:35 a.m. on October 12, 2002, Sgt. Botzheim and Deputies Youk
25 and Froman met with Mr. Franklin at his property. Sgt. Botzheim spoke
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1 with Mr. Franklin, and Mr. Franklin showed him a copy of the survey that
2 was completed in 1998 and filed with the County.

3 9. Sgt. Botzheim also spoke with Mr. Yongue, who advised that he
4 was a licensed surveyor in Washington and Idaho. Mr. Yongue confirmed
5 that he had done the survey in 1998 and that it was filed with the
6 County.

7 10. Mr. Yongue showed Sgt. Botzheim a survey map indicating that the
8 old fence line was within Mr. Franklin's property. There had been a
9 monument marking the boundary, but it had been moved before October 12,
10 2002.

11 11. After this discussion with Mr. Franklin and Mr. Yongue, Sgt.
12 Botzheim and Deputy Youk left the group and began walking southwest on
13 the power line road, toward the fence and gate.

14 12. Sgt. Botzheim reached the gate and began to cross it when an
15 adult male with a video camera, whom Sgt. Botzheim later identified as
16 Leonard Browning, told Patricia Long to tell Sgt. Botzheim to get off her
17 property.

18 13. In response to this direction from Mr. Browning, Ms. Long told
19 Sgt. Botzheim to get off her property.

20 14. During the entire interaction, Mr. Browning had a strident
21 attitude towards Sgt. Botzheim and Deputies Youk and Froman, and insisted
22 forcefully on Ms. Long's rights.

23 15. Sgt. Botzheim explained who he was and why he was there. He
24 also advised Ms. Long that Mr. Franklin and Mr. Yongue had shown him a
25 survey which indicated that the property she was ordering him off was,
26 in fact, Mr. Franklin's.

1 16. At this point, Sgt. Botzheim asked Ms. Long if she had anything
2 to contradict the survey. Ms. Long replied that she did, but that she
3 was not going to show Sgt. Botzheim anything, and that she would save her
4 information for court.

5 17. During this time, Mr. Browning continued to record. He advised
6 Sgt. Botzheim and Deputy Youk he was there assisting Ms. Long. Mr.
7 Browning also indicated that he was with a group called "Citizens Against
8 Corruption," and that the officers were trespassing. Several other
9 members of Citizens Against Corruption were present at Ms. Long's behest
10 in order to observe the survey.

11 18. Sgt. Botzheim asked Mr. Franklin to cross the fence and to show
12 him the surveyed property line. Sgt. Botzheim re-examined the survey and
13 confirmed, from both the survey map and the comments of Mr. Yongue and
14 Mr. Franklin, that Ms. Long and the other members of her group were on
15 Mr. Franklin's property.

16 19. Sgt. Botzheim advised the group that they would have to step
17 back across the property line. All but Ms. Long complied.

18 20. Sgt. Botzheim then told Ms. Long that she would have to leave
19 or be arrested. She replied that she would not leave, and told Sgt.
20 Botzheim he should arrest her because she was on her property. Sgt.
21 Botzheim then placed Ms. Long under arrest for second-degree criminal
22 trespass and advised her of her rights. Ms. Long was taken into custody
23 at 10:03 a.m.

24 21. On October 2, 2006, the Honorable Alan A. McDonald ruled, in
25 granting summary judgment in favor of the defendants, that the arrest was
26 supported by probable cause. On March 17, 2008, Judge McDonald's

1 probable cause determination was upheld by the Ninth Circuit Court of
2 Appeals.

3 22. It was Pend Oreille County Sheriff's Department policy to
4 handcuff all arrested persons who were placed in a patrol car for
5 transport.

6 23. Pursuant to Department policy, after Sgt. Botzheim informed Ms.
7 Long that she was under arrest, he asked her to turn around and place her
8 arms behind her back so she could be handcuffed.

9 24. Ms. Long complied with Sgt. Botzheim's request, and Sgt.
10 Botzheim placed metal handcuffs around Ms. Long's wrists, checking them
11 for tightness by inserting his little finger between each cuff and Ms.
12 Long's wrist. The handcuffs were then double locked so the tightness of
13 the cuff would not increase. As a result of this process, the handcuffs
14 were not excessively tight at any point after they were applied.

15 25. Sgt. Botzheim was a state-certified instructor in use of force
16 and handcuffing, and both he and Deputies Youk and Froman were satisfied
17 that he handcuffed Ms. Long consistent with Pend Oreille Sheriff's
18 Department procedures.

19 26. Sgt. Botzheim then asked Deputy Froman to lead Ms. Long to
20 Deputy Froman's patrol car and transport her to the Pend Oreille County
21 Jail in Newport, Washington. Ms. Long was fully compliant, and Deputy
22 Froman placed his hand on Ms. Long's arm and led Ms. Long down a logging
23 road toward his patrol car, which was 50-100 yards away from the disputed
24 boundary.

25 27. When Deputy Froman and Ms. Long reached the patrol car, Deputy
26 Froman opened the passenger-side back door and helped Ms. Long into the

1 back seat. Ms. Long was again compliant, and at no time during this
2 process did Deputy Froman apply any force to Ms. Long other than leading
3 her by the arm to the patrol car.

4 28. Before she was placed in handcuffs, neither Sgt. Botzheim nor
5 Deputy Froman touched Ms. Long.

6 29. Deputy Froman left Ms. Long in the patrol car and returned to
7 the disputed boundary. At 10:31 a.m., when the scene was secure, Deputy
8 Froman began driving Ms. Long to the Pend Oreille County Jail in Newport.

9 30. Deputy Froman and Ms. Long arrived at the County Jail at 11:07
10 a.m. Deputy Froman led Ms. Long into the facility so she could be
11 processed. Ms. Long was passive and compliant, and no force was applied
12 to her during this process.

13 31. Ms. Long's processing into jail included a booking photo. That
14 photo shows Ms. Long smiling and holding up the identification placard.
15 This photo, Exhibit 504, does not show any visible injury, such as
16 bruising or red marks, to Ms. Long's wrists. Ms. Long does not appear
17 distressed or pained in the photo. Ms. Long's wrists do not now appear
18 disfigured in any way.

19 32. During the entire process described above, Ms. Long was
20 compliant and cooperative. As a consequence, neither Sgt. Botzheim nor
21 Deputy Froman applied any force to Ms. Long.

22 33. At no time between her arrest and delivery to jail personnel in
23 Newport did Ms. Long complain of physical pain or discomfort, from the
24 handcuffs or any other source.

25 34. At no time between her arrest and delivery to jail personnel in
26 Newport did Ms. Long display any behavior to Sgt. Botzheim or Deputy

1 Froman that led them to believe, or that should have led them to believe,
2 that Ms. Long was in physical discomfort because of the handcuffs or for
3 any other reason.

4 35. At all times during Sgt. Botzheim and Deputy Froman's
5 interaction with Ms. Long at the disputed property line, Mr. Browning was
6 holding a video camera, which was pointed toward Sgt. Botzheim and Deputy
7 Froman. This led both to believe that Mr. Browning was videotaping the
8 entire proceedings.

9 36. Ms. Long produced no video tape or photographs of her
10 handcuffing or the application of any force to her person by Sgt.
11 Botzheim or Deputy Froman.

12 37. The audio portion of the video tape taken by Mr. Browning is in
13 evidence as Exhibit 505. On the tape, Mr. Browning can be heard
14 narrating events as they unfolded, and making various statements and
15 comments to Ms. Long and the Deputies at the scene. At no time during
16 his recorded narration does Mr. Browning or anyone else comment that Sgt.
17 Botzheim or Deputy Froman is applying any force to Ms. Long.

18 38. The audio portion of the video tape indicates that Sgt. Botzheim
19 and Deputy Froman were courteous, measured, and professional, and that
20 they did not use any force on Ms. Long.

21 39. Ms. Long did not suffer any physical injury as a result of her
22 interactions with Sgt. Botzheim or Deputy Froman on October 12, 2002.

23 40. If Ms. Long experienced physical pain or discomfort as a result
24 of her handcuffing, it was minimal, and Ms. Long did not complain of this
25 pain or discomfort to Sgt. Botzheim or Deputy Froman.

II. Conclusions of Law

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2 1. The test to assess whether the use of force applied during an
3 arrest was excessive under the Fourth Amendment is whether the force used
4 was objectively reasonable under the circumstances. See *Graham v.*
5 *Connor*, 490 U.S. 386, 397 (1989).

6 2. The factors considered under this test are the severity of the
7 crime at issue, whether the suspect poses an immediate threat to the
8 safety of the officers or others, and whether he is actively resisting
9 arrest or attempting to evade arrest by flight. *Graham*, 490 U.S. at 396.
10 These factors are to be considered in relation to the amount of force
11 used in a particular seizure. *Chew v. Gates*, 27 F.3d 1432, 1441 (9th
12 Cir. 1994).

13 3. Minimal force, such as the force required for ordinary
14 handcuffing, is constitutionally insufficient to qualify as excessive.
15 See *Jackson v. City of Bremerton*, 268 F.3d 646, 652-53 (9th Cir. 2001).
16 Handcuffing that does not cause injury is a reasonable use of force. See
17 *Arpin v. Santa Clara County Transp. Agency*, 261 F.3d 912, 921 (9th Cir.
18 2001).

19 5. Because Sgt. Botzheim and Deputy Froman used only minimal force
20 in handcuffing and transporting Plaintiff and caused no temporary or
21 permanent injury, their physical contact with her was objectively
22 reasonable under the circumstances. Therefore, they did not violate
23 Plaintiff's Fourth Amendment right to be free from unreasonable seizure,
24 and are not liable under section 1983.
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1 Accordingly, it is hereby **ORDERED**:

2 1. Defendants' oral Motion to Dismiss pursuant to Federal Rule of
3 Criminal Procedure 41(b) is **DENIED** as moot.

4 2. Judgment shall be entered in Defendants' favor.

5 3. All pending motions are **DENIED** as moot.

6 4. This case file shall be closed.

7 **IT IS SO ORDERED.** The District Court Executive is directed to enter
8 this Order and provide copies to counsel and Ms. Long.

9 **DATED** this 28TH day of September 2009.

10
11 s/Edward F. Shea

EDWARD F. SHEA

12 United States District Judge

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